

*Not published*

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

NO. 16-0003

LLOYD MAYS

APPELLANT,

V.

ROBERT A. McDONALD,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before GREENBERG, *Judge*.

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

On July 3, 2015, the appellant, Lloyd Mays, through counsel, appealed a November 13, 2014, Board of Veterans' Appeals (Board) decision that denied entitlement to restoration of a 70% disability rating for bilateral hearing loss. The appellant filed his brief on May 18, 2016, and the Secretary filed his brief on September 1, 2016. On September 26, 2016, the Secretary submitted to the Court the Record of Proceedings, stating that the record included a copy of the Board decision under appeal, all documents cited to by the parties in their respective briefs, and any other documents before the Board otherwise relevant to the issues of the case.

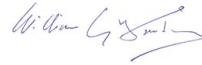
In the Board decision, the Board stated that "chronic sensorineural hearing loss, hearing is not medically or surgically restorable." R. at 15. The Board then cites two sources as the bases for this conclusion: "Merritt's Neurology, 12<sup>th</sup> Edition § 9:6" and "Primary Care Medicine: Office of Evaluation and Management of the Adult Patient, 6<sup>th</sup> Edition, Chapter 212." However, the Record of Proceedings provided by the Secretary lacks these two sources. The Court discerns that these two sources, contained in the Record Before the Agency and specifically mentioned in the Board decision on appeal (*see* R. at 15), are relevant to the issues of the case, and that their inclusion is necessary for the Secretary to comply with U.S. VET. APP. R. 28.1(a)(1)(C).

Accordingly, it is

ORDERED that the Secretary, within 2 days, supplement the Record of Proceedings to satisfy the requirements of U.S. VET. APP. R. 28.1(a), including all sources used to define sensorineural hearing loss within the Board's November 13, 2015, decision, and all information within these sources related to hearing loss, even if not relied upon by the Board.

DATED: November 17, 2016

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William S. Greenberg", with a stylized flourish at the end.

WILLIAM S. GREENBERG  
Judge

Copies to:

Michael R. Viterna

VA General Counsel (027)